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Date: JULY 30, 2007	Client & Matter Number: 026559-000500US	No. Pages (including this one): 7
To: ATTENTION: Office of Petitions Commissioner for Patents U.S. Patent and Trademark Office	At Fax Number: (571) 273-8300	Confirmation Phone Number:
From: Philip H. Albert, Reg. No. 35,819		(0213) (650) 326-2400

Message:**Please see attached:**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 1-571-273-8300 on July 30, 2007.

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By: 
Paula S. Cunningham

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PATENT
Attorney Docket No.: 026559-000500US

TOWNSEND and TOWNSEND and CREW LLP

By: Paula S. Cunningham

Paula S. Cunningham

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Scott Wlaschin, et al.

Patent No. 5,893,087
Issue Date: August 6, 1998
Application No.: 08/633,842
Filed: April 10, 1996

For: METHOD AND APPARATUS FOR
IMPROVED INFORMATION STORAGE
AND RETRIEVAL SYSTEM

Customer No.: 20350

Confirmation No. 8391

Examiners:

Amelia Au
Charles Pearson, Director

PETITION FOR RECONSIDERATION
UNDER 37 CFR § 1.378(e)

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OFFICE OF PETITIONS

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Director is hereby petitioned to accept the late payment of the maintenance fee for the above-cited patent.

Status of Petitions

A first petition to petition to accept the delayed payment of a maintenance fee under 37 CFR § 1.378(b) was filed August 22, 2005 and was dismissed on November 4, 2005. A second petition to petition to accept the delayed payment of a maintenance fee under 37 CFR § 1.378(b) was filed December 5, 2005 and was granted on September 11, 2006. On May 29, 2007, the decision on the second petition was vacated and the second petition was dismissed. This petition for reconsideration is in response to the dismissal of the second petition.

The first petition and second petition were filed *pro se*, by a principal of assignee of the patent. This petition for reconsideration is filed by attorneys of record. The precise contents of the first and second petitions were not known to the attorneys of record and despite repeated

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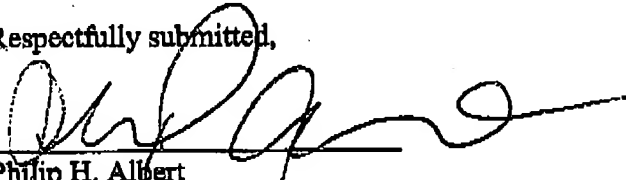
JUL 30 2007

PATENT

Attorney Docket No.: 026559-000500US

The Director is authorized to charge the petition fee of \$400.00 as set forth in 37 CFR §1.17(f) and any maintenance fees as set forth in 37 CFR §1.20(e) and 1.20(f) to Petitioner's Deposit Account No. 20-1430. The Director is hereby authorized to charge any additional fees or credit any overpayments to Petitioner's Deposit Account No. 20-1430.

Respectfully submitted,


Philip H. Albert
Reg. No. 35,819

Date: July 30, 2007

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: (650) 326-2400
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Attachment (Declaration)
PHA/psc

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PATENT
Attorney Docket No.: 026559-000500US

attempts to obtain a complete file history from the USPTO beginning in December 2006, the file history was not made available until the file was scanned and the petitions available on PAIR sometime after July 19, 2007, leaving less than ten days to prepare this petition for reconsideration.

Background

The U.S. Patent that is the subject of this petition for reconsideration (U.S. Patent No. 5,893,087) issued on April 6, 1999 and therefore the first maintenance fee could have been paid during a first window of Monday, April 8, 2002 through Monday, October 7, 2002 without surcharge, during a second window of October 8, 2002 to Monday, April 7, 2003 with a surcharge, or during a third window from April 8, 2003 to April 6, 2005 with a surcharge, fee and an assertion of unintentional delay.

Reasons for Reconsideration

It appears that the U.S. Patent and Trademark Office dismissed the second petition based on an asserted lack of an adequate showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, as required by 37 CFR §1.378(b), but otherwise accepted that the payment requirements of 37 CFR §1.378(b) were met.

The showing requirements of 37 CFR §1.378(b) can be parsed into a showing that (1) the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and (2) that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

Applicant submits that a number of facts are already of record and they are not in dispute, so further evidentiary support for those facts does not appear to be needed. Applicant interprets the dismissal of the second petition as requiring additional facts not already of record to support the showing requirements. Additional facts that this petition for reconsideration relies on are submitted as a declaration from Louise J. Wannier or in documentary form, as appropriate.

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Ms. Wannier became aware of the need to pay the maintenance fees on or about March 15, 2005. After that date, she attempted to engage experienced patent counsel to handle the process of paying the delayed maintenance fee. Not having patent prosecution experience herself, she relied on data provided by an experienced patent practitioner to determine deadlines.

While it is clear from the record that the deadline for filing an "unintentionally delayed" petition was in fact April 6, 2005, Ms. Wannier was exercising reasonable care in planning the petitions process, but nonetheless misinterpreted the data presented to her. Document F of the second petition included a table of patents and a column labeled "Abandoned Date". For the above-cited patent, the Abandoned Date is shown as May 7, 2003, which is the date that the official file history indicates was the date that the file was marked as being abandoned, but which was interpreted as the date that the patent was abandoned.

The delay in paying the maintenance fee from April 8, 2003 to April 6, 2005 was unintentional. The delay in paying the maintenance fee from April 7, 2005 to August 22, 2005 was unavoidable as the *pro se* petitioner required time to prepare a petition.

Applicant submits that the facts or record show that petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. It is common for the USPTO to consider a petition filed promptly where an experienced practitioner files a petition to revive within three months the discovery of the expiration of a patent. Applicant submits that a *pro se* petition filed four months and a few days after discovering that an "unavoidably delay" petition was require, is not an unprompt filing.

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PATENT
Attorney Docket No.: 026559-000500US

TOWNSEND and TOWNSEND and CREW LLP

By: Paula S. Cunningham
Paula S. Cunningham

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Scott Wlaschin, et al.

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AND RETRIEVAL SYSTEM

Customer No.: 20350

Confirmation No. 8391

Examiners:
Amelia Au
Charles Pearson, Director

DECLARATION OF LOUISE J.
WANNIER

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

I, Louise J. Wannier, declare as follows:

1. I incorporated LJM Software, Inc. on or about April 9, 2004 as LJM Enfish, Inc. and subsequently renamed the company to "LJM Software, Inc." (hereinafter "LJM Software") on or about May 12, 2004.
2. The rights to the above-captioned patent were assigned to LJM Software on or about June 4, 2004.
3. As the incorporator of LJM Software, I would have been responsible for payment of the maintenance fees for this patent after the rights were obtained.
4. Prior to March 15, 2005, I was not aware that a maintenance fee was due to avoid expiration of the above-captioned patent.

PATENT

Attorney Docket No.: 026559-000500US

5. On March 15, 2005, I met with Kevin Spivak of Morrison and Foerster LLP to discuss representing LJM Software in patent matters. At that time, I was presented with a chart (of record as Document F of a petition filed December 5, 2005, but without handwritten notes at the time) showing that the abandonment date of the above-cited application was May 7, 2003.

6. At that March 15, 2005 meeting, I understood that the maintenance fee could be paid with a surcharge and an "unintentional delay" petition if filed on May 6, 2005 or before.

7. It was not until April 19, 2005 that I became aware that the true deadline for the "unintentional delay" petition was April 6, 2005.

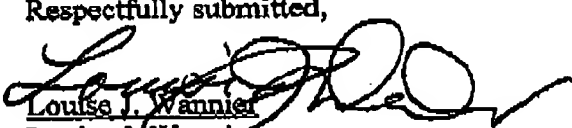
8. I am not a patent attorney or patent agent.

9. From April 19, 2005 until August 22, 2005, I diligently prepared a petition to accept delayed payment of the maintenance fee.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: July 30, 2007


Louise J. Wannier
Louise J. Wannier

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